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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

Case No. **2013- 50**

13 **CHERYL LYNN MORAGA**

**STATEMENT OF ISSUES**

14 **Registered Nurse License Applicant**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,  
21 Department of Consumer Affairs.

22 2. On or about October 3, 2011, the Board of Registered Nursing, Department of  
23 Consumer Affairs received an application for a Registered Nurse License from Cheryl Lynn  
24 Moraga, also known as Cheryl Lynn Osburn (Respondent). On or about October 3, 2011, Cheryl  
25 Lynn Moraga certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. The Board denied the application on March 19, 2012.

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## JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession  
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the  
4 crime or act is substantially related to the qualifications, functions, or duties of the  
5 business or profession for which application is made.

6 7. Section 482 of the Code states:

7 Each board under the provisions of this code shall develop criteria to evaluate  
8 the rehabilitation of a person when:

9 (a) Considering the denial of a license by the board under Section 480; or

10 (b) Considering suspension or revocation of a license under Section 490.

11 Each board shall take into account all competent evidence of rehabilitation  
12 furnished by the applicant or licensee.

13 8. Section 493 of the Code states:

14 Notwithstanding any other provision of law, in a proceeding conducted by a  
15 board within the department pursuant to law to deny an application for a license or to  
16 suspend or revoke a license or otherwise take disciplinary action against a person who  
17 holds a license, upon the ground that the applicant or the licensee has been convicted  
18 of a crime substantially related to the qualifications, functions, and duties of the  
19 licensee in question, the record of conviction of the crime shall be conclusive  
20 evidence of the fact that the conviction occurred, but only of that fact, and the board  
21 may inquire into the circumstances surrounding the commission of the crime in order  
22 to fix the degree of discipline or to determine if the conviction is substantially related  
23 to the qualifications, functions, and duties of the licensee in question.

19 As used in this section, "license" includes "certificate," "permit," "authority,"  
20 and "registration."

21 9. Section 2761 of the Code states:

22 The board may take disciplinary action against a certified or licensed nurse or  
23 deny an application for a certificate or license for any of the following:

24 (a) Unprofessional conduct, which includes, but is not limited to, the  
25 following:

26 (4) Denial of licensure, revocation, suspension, restriction, or any  
27 other disciplinary action against a health care professional license or certificate by  
28 another state or territory of the United States, by any other government agency, or by  
another California health care professional licensing board. A certified copy of the  
decision or judgment shall be conclusive evidence of that action.

1 (f) Conviction of a felony or of any offense substantially related to the  
2 qualifications, functions, and duties of a registered nurse, in which event the record of  
3 the conviction shall be conclusive evidence thereof.

4 10. Section 2762 of the Code states:

5 In addition to other acts constituting unprofessional conduct within the meaning  
6 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
7 licensed under this chapter to do any of the following:

8 (c) Be convicted of a criminal offense involving the prescription, consumption,  
9 or self-administration of any of the substances described in subdivisions (a) and (b) of  
10 this section, or the possession of, or falsification of a record pertaining to, the  
substances described in subdivision (a) of this section, in which event the record of  
the conviction is conclusive evidence thereof.

11 .....  
12 11. Section 2765 of the Code states:

13 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
14 made to a charge substantially related to the qualifications, functions and duties of a  
15 registered nurse is deemed to be a conviction within the meaning of this article. The  
16 board may order the license or certificate suspended or revoked, or may decline to  
17 issue a license or certificate, when the time for appeal has elapsed, or the judgment of  
18 conviction has been affirmed on appeal or when an order granting probation is made  
suspending the imposition of sentence, irrespective of a subsequent order under the  
provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his  
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of  
guilty, or dismissing the accusation, information or indictment.

## 19 REGULATORY PROVISIONS

20 12. California Code of Regulations, title 16, section 1444 states:

21 A conviction or act shall be considered to be substantially related to the  
22 qualifications, functions or duties of a registered nurse if to a substantial degree it  
23 evidences the present or potential unfitness of a registered nurse to practice in a  
manner consistent with the public health, safety, or welfare. Such convictions or acts  
shall include but not be limited to the following:

24 (a) Assaultive or abusive conduct including, but not limited to, those violations  
25 listed in subdivision (d) of Penal Code Section 11160.

26 (b) Failure to comply with any mandatory reporting requirements.

27 (c) Theft, dishonesty, fraud, or deceit.

28 (d) Any conviction or act subject to an order of registration pursuant to Section  
290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

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#### **FIRST CAUSE FOR DENIAL OF APPLICATION**

**(March 12, 1998 Criminal Conviction for DUI on June 14, 1997)**

14. Respondent's application is subject to denial under sections 480, subdivisions (a)(1) and (a)(3)(A), and 2671, subdivision (f) of the Code in that she was convicted of a criminal offense substantially related to the qualifications, duties, and functions of a registered nurse. The circumstances are as follows:

a. On or about March 12, 1998, in a criminal proceeding entitled *State of Arizona vs. Cheryl Lynn Moraga*, in Tucson Municipal Court, case number M-1041-TR-7244868, Respondent was convicted on her plea of guilty to violating Arizona Revised Statutes 28-692A1, driving under the influence of alcohol, a misdemeanor.

b. As a result of the conviction, on or about March 12, 1998, Respondent was granted unsupervised probation for 12 months, and she was ordered to pay fees and fines, and serve one day in jail.

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1                                   **SECOND CAUSE FOR DENIAL OF APPLICATION**

2                                   **(Conviction of an Alcohol-Related Criminal Offense)**

3           15.   Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)  
4 of the Code in that on or about March 12, 1998, she was convicted of an alcohol-related criminal  
5 offense, as described in paragraph 14, above, which would be a ground for discipline under  
6 section 2672, subdivision (c) of the Code for a licensed registered nurse.

7                                   **THIRD CAUSE FOR DENIAL OF APPLICATION**

8                                   **(Out-of-State Discipline Against Respondent's Nursing License)**

9           16.   Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)  
10 and 2761, subdivision (a)(4) of the Code for unprofessional conduct in that Respondent's Arizona  
11 professional nursing license was disciplined by the Arizona State Board of Nursing. The  
12 circumstances are as follows:

13                   a.   On or about June 20, 2007, Respondent underwent a pre-employment urine  
14 drug screen when she applied for employment at Cross Country Staffing in Boca Raton, Florida.  
15 The drug screen was positive for amphetamines. The Arizona State Board of Nursing (Arizona  
16 Board) conducted an interview with Respondent regarding the incident. Respondent stated that  
17 she accepted a capsule from a truck driver at a truck stop to help keep her awake while driving.  
18 Respondent admitted that it was wrong to take the capsule from the truck driver.

19                   b.   As a result of the incident, a complaint was filed charging Respondent with  
20 violations of Arizona Revised Statutes sections 32-1663(D), 32-1601(16)(d) and (j), and Arizona  
21 Administrative Code section R4-19-403B(9), (B17), (B18) and (B31). Respondent admitted the  
22 charges in the Arizona Board's Findings of Fact.

23                   c.   On or about April 3, 2008, Respondent entered into a Consent Agreement and  
24 Order No. 0706088 with the Arizona Board for a decree of censure against Respondent's  
25 professional nurse license number RN073549.

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1. Denying the application of Cheryl Lynn Moraga for a Registered Nurse License;
2. Taking such other and further action as deemed necessary and proper.

*Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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